

APPEARANCES:

(Cont'd)

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(Appearing on behalf of the Staff of the
Illinois Commerce Commission)

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MARKED

ADMITTED

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PROCEEDINGS

(Whereupon prior to the hearing LaHarpe
Exhibit 1 was marked for identification.)

JUDGE ALBERS: By the authority vested in me by
the Illinois Commerce Commission, I now call Docket
Number 04-0184. This docket was initiated by
LaHarpe Telephone Company. The Petitioner seeks a
suspension or modification of the Section 251(b)(2)
requirements of the Federal Telecommunications Act.

May I have the appearances for the
record, please.

MR. MUNCY: Yes, Your Honor. Dennis K. Muncy
and Joseph D. Murphy, 306 West Church Street,
Champaign, Illinois 61820, appearing for LaHarpe
Telephone Company, Inc..

MR. MADIAR: Appearing on behalf of the Staff
of the Illinois Commerce Commission, Eric Madiar and
Tom Stanton, Office of General Counsel, 160 North
La Salle Street, Suite C-800, Chicago, Illinois
60601.

MR. COY: Appearing for Verizon Wireless,
Roderick S. Coy and Haran C. Rashes of Clark Hill,

1 P.L.C., 2455 Woodlake Circle, Okemos, O-K-E-M-O-S,
2 Michigan 48864.

3 JUDGE ALBERS: Thank you.

4 Let the record reflect that there are no
5 others wishing to enter an appearance.

6 The only preliminary matter that I'm
7 aware of is the Staff May 24th motion for leave to
8 file its testimony instanter. Is there any
9 objection to that motion?

10 MR. MUNCY: No objection, Your Honor.

11 MR. COY: No objection.

12 JUDGE ALBERS: Hearing no objection then, the
13 motion is granted.

14 The purpose of today's hearing is to
15 admit into evidence the previously offered testimony
16 subject to any objections, and with that said, I
17 will ask Mr. Muncy to call his first witness.

18 MR. MUNCY: Thank you, Your Honor. I'd call
19 Jason P. Hendricks who is ready to be sworn in I
20 believe.

21 JUDGE ALBERS: Mr. Hendricks, could you raise
22 your right hand, Mr. McDermott.

1 (Whereupon two witnesses were sworn by
2 Judge Albers.)

3 JUDGE ALBERS: Thank you.

4 JASON P. HENDRICKS

5 called as a witness on behalf of LaHarpe Telephone
6 Company, Inc., having been first duly sworn, was
7 examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MUNCY:

10 Q. Mr. Hendricks, would you state your name and
11 business address for the record, please.

12 THE WITNESS:

13 A. Jason P. Hendricks, 2270 LaMontana Way,
14 Colorado Springs, Colorado 80918.

15 MR. MADIAR: Your Honor, Staff at this time
16 would move to waive the necessity for the
17 foundational questions for this witness.

18 MR. COY: I will also waive if it's not
19 considered a waiver of the other motions that I
20 intend to make.

21 JUDGE ALBERS: It will not be considered as
22 such.

1 MR. MUNCY: Your Honor, then we would be
2 offering LaHarpe Exhibit 1 which is Mr. Jason P.
3 Hendricks' direct testimony which consists of 32
4 pages of questions and answers.

5 LaHarpe Exhibit 1 has three attachments.
6 Attachment No. 1 is the local number portability
7 data summary for LaHarpe Telephone Company which was
8 prepared by Mr. Hendricks and addressed in his
9 testimony. Attachment 2 to LaHarpe Exhibit 1 is the
10 correspondence which LaHarpe Telephone Company
11 received from wireless carriers in regard to
12 wireline-to-wireless number portability, and
13 Attachment 3 to LaHarpe Exhibit 1 is a copy of the
14 Nortel training course documents.

15 We'd also be offering LaHarpe Exhibit 2
16 which is the Rebuttal Testimony of Jason P.
17 Hendricks which consists of 22 pages of questions
18 and answers and has one attachment. Attachment No.
19 1 to LaHarpe Exhibit Number 2 is a document which
20 Mr. Hendricks discusses in his testimony in regard
21 to why the number of minutes of use used in his
22 analysis was correct.

1 And therefore I'd offer LaHarpe Exhibit 1
2 together with Attachments 1 through 3 and LaHarpe
3 Exhibit 2 with Attachment 1.

4 JUDGE ALBERS: I trust that Exhibit 1 is not on
5 e-Docket whereas Exhibit 2 is?

6 MR. MUNCY: That's correct, Your Honor. I'm
7 sorry I forgot to mention that.

8 JUDGE ALBERS: That's all right. I thought I'd
9 just make sure that's still the case.

10 Any objection to the exhibits?

11 MR. MADIAR: None from Staff, Your Honor.

12 MR. COY: Yes, we have an objection, and I
13 would be making at this time my motion to object to
14 not only the admission but to move to strike the
15 testimony and also to dismiss the case.

16 This is not real testimony that is of a
17 competent, material, or substantial nature. It is a
18 canned presentation that is presented some 33 times,
19 although occasionally by different people's -- with
20 different people's names on it. Mr. Hendricks'
21 himself's name is on some 11 of those cases.

22 The basis for the motion is that this

1 proceeding is one of 33 that were filed on or about
2 the same time, knowing that there was a 180-day
3 federal schedule required for a decision, with the
4 result that it has produced simply an assembly line
5 of cases that are not really distinguishable at all
6 and constitutes by the 33 petitioners essentially a
7 request for a blanket waiver. A blanket waiver of
8 this type is beyond the Commission's jurisdiction
9 under the Federal Telecommunications Act of 1996 and
10 is the basis for the motion to dismiss.

11 The motion to strike is, of course, based
12 upon it not being competent, material, or
13 substantial evidence, and we find that scheduling
14 the 33 cases the way they have been scheduled and
15 run seriatim, one after another, requiring multiple
16 cross-examinations of substantially identical
17 testimony, giving witnesses multiple opportunities
18 to change answers, is prejudicial, a violation of
19 due process, and a fundamentally unfair proceeding.

20 JUDGE ALBERS: Okay. Responses?

21 MR. MUNCY: Your Honor, as we've indicated in
22 other dockets, LaHarpe Telephone Company filed a

1 petition for suspension under the terms of the
2 Federal Act, and Mr. Hendricks is presenting his
3 testimony in support of that. Under Section 251(f)
4 there is specific criteria in regard to obtaining a
5 suspension. LaHarpe through Mr. Hendricks' direct
6 and rebuttal testimony is addressing the specific
7 statutory criteria under which LaHarpe is seeking a
8 suspension of the number portability requirements
9 consistent with the requirements of the Act based
10 upon the company-specific circumstances.

11 The fact that the FCC issued some common
12 order that was applicable to a great number of
13 carriers which led them to file each with their own
14 specific facts is certainly not the fault of LaHarpe
15 nor any reason why Mr. Hendricks' testimony
16 shouldn't be entered into the record. As the judge
17 is well aware, Section 251(f) in regard to
18 suspensions has a 180-day time limit associated with
19 it. That's the law. It's neither LaHarpe's fault
20 nor the Commission's fault. We've all had to deal
21 with this. In fact, an agreed-to schedule and
22 including an agreed-to hearing schedule was agreed

1 to by counsel for Verizon Wireless as well as
2 others. There is simply no basis to either dismiss
3 this docket or to deny the entry of LaHarpe Exhibits
4 1 and 2 which is presenting the factual evidence on
5 a company-specific basis to meet the company's
6 burden of proof under 251(f).

7 JUDGE ALBERS: Does Staff have a response?

8 MR. MADIAR: Staff has no comment, Your Honor.

9 MR. COY: The only additional thing I would add
10 is that it is absolutely incorrect to say that
11 Verizon Wireless agreed to the schedule. We were
12 informed there was a week and a half. We didn't
13 agree to that. We didn't like that. We think
14 that's unreasonable. We think that's prejudicial.
15 We think that violates due process to do 33 cases in
16 a week and a half. All we agreed to was the order
17 in which the cases would be taken up, and that is a
18 material and substantial difference. There is no
19 way anyone rationale would agree, if they had a
20 choice, to do 33 cases in a week and a half. That's
21 a farce. That's what we're stuck with. I
22 understand the circumstances, but I certainly do not

1 want to let the record stand suggesting that somehow
2 in any way Verizon Wireless agreed to any such of a
3 procedural process as we have been going through
4 here. The only thing that we have agreed to, which
5 is of some necessity, is to know which case is going
6 to be called next.

7 JUDGE ALBERS: Okay.

8 Well, again, I appreciate the time
9 constraints everyone is under, but as you are, I am
10 also bound by the federal statute, and to the extent
11 that we have 33 some companies that have filed cases
12 in roughly the same time period, I cannot control
13 that nor do I believe the Commission can. The fact
14 is, under the federal law we have an obligation to
15 act on these matters, and I think the Commission to
16 the best of its ability will do so.

17 I want to assure Verizon Wireless that on
18 my part, I am not going to look at these cases as a
19 group but as individual cases, and by no means do I
20 want you to believe that there's any type of
21 prejudgment going on. That's the main thrust of
22 these comments, and in light of that, I will deny

1 both the motion to strike and the motion to dismiss
2 the proceeding.

3 Are there any other comments or
4 objections regarding the admission of Mr. Hendricks'
5 testimony and attachments?

6 MR. COY: No.

7 JUDGE ALBERS: Hearing none, then they are
8 admitted.

9 (Whereupon LaHarpe Exhibits 1 and 2 with
10 attachments were received into evidence.)

11 JUDGE ALBERS: At this point is Mr. Hendricks
12 submitted for cross-examination?

13 MR. MUNCY: Mr. Hendricks is available for
14 cross-examination.

15 MR. COY: I think at this point in the script
16 we have my motion to ask my cross-examination of
17 Mr. Hendricks previously in the Odin case
18 incorporated by reference or in the form of a
19 specific exhibit after the transcript becomes
20 available. We find it prejudicial to have to
21 cross-examine the same witness on substantially
22 identical testimony three, four, five, six, in his

1 case it would be eight or nine. He's in eleven
2 cases, but I don't think we're in each of those, and
3 that's not a reasonable procedure and we're not
4 inclined to follow it, so we request that one of the
5 two alternatives in the motion be allowed.

6 JUDGE ALBERS: Responses?

7 MR. MUNCY: Your Honor, as we've discussed in
8 other dockets, we object to that procedure. These
9 are company-specific cases. As you know from a
10 prior docket, a discussion of the transcripts, we
11 don't even yet have in paper form a transcript of
12 the Odin case, of the Odin cross-examination, which
13 based upon my recollection over the last several
14 days was different in each case and there were many
15 things that were company specific. I would object
16 to that and ask counsel for Verizon Wireless to
17 proceed with any cross-examination that he has in
18 this proceeding regarding LaHarpe Telephone Company
19 and Mr. Hendricks' testimony in this docket.

20 MR. MADIAR: Staff would have a similar
21 objection to that and allowing for the wholesale
22 integration of prior cross from a previous case

1 being admit as an exhibit. Staff remains open to
2 any overture that Verizon Wireless might have to put
3 together some type of other stipulated cross as
4 outlined by the Administrative Law Judge, and we
5 remain open to that as an avenue to pursue.

6 JUDGE ALBERS: Do you have a reply to those
7 responses?

8 MR. COY: It's important that the record be
9 clear on this point when people are referring to
10 other cases in cross-examination. We've
11 cross-examined Mr. Hendricks, and I am beginning to
12 forget, three or four times in the last two and a
13 half, two and three-quarters days now because we are
14 running these cases one right after another. It's
15 not like a case that happened last year, last month,
16 or even last week. It was hours ago, and I don't
17 want the record to reflect anything to the
18 contrary. That's all I have in addition to my
19 earlier argument.

20 JUDGE ALBERS: Well, just as you were concerned
21 about the comments being made in this docket that
22 referred to another docket and the confusion that

1 might result, I too am concerned about the confusion
2 that might result from lifting the transcript from
3 one docket into another. I remain open to any offer
4 by the parties to put together any type of a
5 prepared cross statement to the extent that those
6 questions that are asked repeatedly or at least have
7 been intended to be asked repeatedly could be put in
8 written format with a response taken from a prior
9 transcript and agreed to by the attorneys. Absent
10 that though, as I said, I'm hesitant to simply
11 incorporate the transcript from one of these to
12 another, particularly in light of the objections and
13 the fact that no one in this room has had an
14 opportunity to actually review the Odin transcript.
15 So with that, the motion is denied.

16 MR. COY: The only other thing that I would
17 have, Your Honor, is that once the transcript does
18 become available, I would like the opportunity to
19 submit it as an exhibit, the cross-examination,
20 pursuant to the Commission's Rule 200.650 and for
21 the purpose of impeaching the testimony of the
22 witness that's been prefiled.

1 JUDGE ALBERS: .650?

2 MR. COY: Yes.

3 JUDGE ALBERS: And you'd like to impeach the
4 witness using a transcript from Odin?

5 MR. COY: Yes, which obviously isn't available
6 so I can't do it in the hearing, but I'd like to
7 submit it for the purpose of impeaching him after
8 the fact when it becomes available.

9 JUDGE ALBERS: So essentially you're asking to
10 have a late-filed exhibit, so to speak, which
11 happens to be the transcript from the Odin case.

12 MR. COY: Correct.

13 JUDGE ALBERS: Well, you're making that motion
14 now to be able to do that I take it?

15 MR. COY: Yes, yes.

16 JUDGE ALBERS: Okay. I'll hear responses to
17 that.

18 MR. MUNCY: Judge, do you have the Rules of
19 Practice? Can I look at that one specific section,
20 please? I don't have that with me.

21 (Pause in the proceedings.)

22 MR. MADIAR: Your Honor, if you would indulge

1 me as well.

2 (Pause in the proceedings.)

3 Thank you, Your Honor.

4 MR. MUNCY: I guess I'm somewhat -- I object.

5 I'm somewhat confused by Mr. Coy's statements.

6 Mr. Hendricks presented testimony in the Odin docket

7 and was subject to cross-examination there based

8 upon the specific testimony and exhibits and

9 evidence he offered in that docket. He has offered

10 fact-specific evidence in this docket related to

11 LaHarpe. If counsel for Verizon Wireless wants to

12 cross-examine his testimony in this docket, they

13 have every right to do so. What use a

14 cross-examination of a different set of testimony in

15 a different docket, I don't believe it's proper to

16 incorporate that into this docket just as a general

17 matter without reference to what it has to do with

18 the specific testimony that Mr. Hendricks has

19 submitted in that docket, and I don't think that's

20 appropriate and I don't even see how that could be

21 used in regard to impeaching the direct examination

22 of Mr. Hendricks submitted in this docket, and I

1 object.

2 JUDGE ALBERS: Staff?

3 MR. MADIAR: I was hoping maybe I could get a
4 little clarification. You're seeking to utilize
5 this for purposes of impeachment. Are you
6 attempting to not have to cross Mr. Hendricks or
7 pursue your cross and then utilize this as some
8 later impeachment? I'm just a little confused. If
9 you could help me develop a response.

10 MR. COY: If the transcript were available,
11 certainly it could be utilized in that fashion in
12 the normal course, and it isn't available because of
13 the assembly line process of running these cases, 33
14 of them, in a short period of time one right after
15 another repeating the same stuff. It would be
16 useful -- it would normally be something that you
17 could use to impeach a witness if it had occurred a
18 month ago or two months ago or something like that.
19 I want that document in evidence for the same
20 purposes then even though it's not available to use
21 live. It's as simple as that. You understood it
22 well when you repeated it to me the very first time.

1 JUDGE ALBERS: Well, now what I want to
2 understand right now, as Mr. Madiar I think was
3 getting to, is it your intent though to go ahead and
4 cross Mr. Hendricks today and then later be able to
5 compare the two?

6 MR. COY: Well, there very well could be a
7 couple of questions for Mr. Hendricks today. It
8 will depend upon how things progress, frankly. I
9 don't know how much questioning of him I need to
10 do. I'm in a dilemma because, as I've told you
11 repeatedly in case after case after case, I feel
12 very prejudiced asking the third, fourth, fifth,
13 sixth, seventh, eighth, ninth time for an answer
14 because the witness always seems to come up with a
15 little bit more, a little bit different, and I'm
16 doubly prejudiced by the fact that I don't have
17 access to the transcripts to pin them down on the
18 answer that they gave me to the question the first
19 time.

20 JUDGE ALBERS: I understand what you're saying,
21 but I'll note though that I do recall in prior
22 proceedings you having asked different questions as

1 well, which is certainly within your rights. I'm
2 just puzzled or concerned about, as you indicated,
3 if you had asked Mr. Hendricks a question and he
4 gave an answer in this proceeding different from a
5 prior answer he had given in a different proceeding,
6 yes, I could see pulling that out and seeking to
7 impeach him, yet I'm not sure 200.650 is the
8 appropriate means by which to accomplish what you're
9 -- what I believe you would like to accomplish.

10 MR. COY: Is there a better rule?

11 (Laughter)

12 JUDGE ALBERS: Well, maybe. Would you like
13 some time to --

14 MR. COY: At this juncture I can't tell you
15 that there is, and apparently no one else knows of
16 one either I assume. We just want to make sure we
17 have all the bases covered, Your Honor.

18 JUDGE ALBERS: I understand. Well, to the
19 extent that you would like to rely on 200.650 to
20 incorporate or to add to this record the transcript
21 from the Odin proceeding, I would deny that motion.

22 MR. COY: Oh, Your Honor, there is one other

1 thing with respect to the number of times it has
2 been claimed, particularly by counsel for
3 Petitioner, in reference to constantly claiming that
4 the witnesses testify with respect to fact-specific
5 information. Let the record be very clear that that
6 is, in our view, a gross overstatement. This is
7 patterned testimony, and we expect to show it up
8 side by side with each other and we'll let the fact
9 finders decide whether this is fact-specific
10 testimony or whether it's canned testimony to which
11 you simply plug in a few different numbers in a
12 different switch. So I didn't want to let that go,
13 this constant sort of repeating that it's fact-
14 specific testimony. It isn't fact-specific
15 testimony in our view at all. That's the whole
16 basis of our motion to dismiss.

17 JUDGE ALBERS: Understood.

18 Okay. Is there anything else then with
19 regard to -- no? Okay.

20 And at this point I do not recall whether
21 or not Mr. Hendricks was tendered for cross.

22 MR. MUNCY: I believe he was, yes.

1 JUDGE ALBERS: He was? Okay.

2 MR. MUNCY: I think that's what led to --

3 JUDGE ALBERS: Okay.

4 MR. MUNCY: -- the latest episode.

5 JUDGE ALBERS: Thank you for refreshing my
6 recollection.

7 MR. COY: With that then, I have a question or
8 so.

9 CROSS EXAMINATION

10 BY MR. COY:

11 Q. Mr. Hendricks, is it not correct that LaHarpe
12 actually ordered, installed and loaded the module
13 with respect to local number portability in their
14 switch in March of 2004?

15 A. The date I'm not aware of, but they have
16 loaded the software in the switch, yes.

17 Q. Were you responsible for the discovery request
18 that provided that information?

19 A. If there's a discovery on it. Can you point
20 me to it? Because I'm not aware of it.

21 Q. 2.01.

22 A. Verizon Wireless?

1 Q. Yes.

2 A. Yes, I was responsible.

3 MR. COY: With that, and under these
4 circumstances, that's all I choose to pursue with
5 Mr. Hendricks.

6 JUDGE ALBERS: Okay. Staff?

7 MR. MADIAR: Staff has no cross, Your Honor.

8 JUDGE ALBERS: Okay.

9 EXAMINATION

10 BY JUDGE ALBERS:

11 Q. Mr. Hendricks, do you know what area code
12 LaHarpe is in?

13 A. 217.

14 Q. Thank you.

15 In light of Staff's position and your
16 rebuttal, should I understand that Petitioner is now
17 only seeking a waiver under Section 251(f)(2)(A)(i)
18 regarding impact on customers?

19 A. That's correct.

20 JUDGE ALBERS: Thank you, Mr. Hendricks.

21 Did you have any redirect?

22 MR. MUNCY: No redirect.

1 JUDGE ALBERS: Okay.

2 (Witness excused.)

3 MR. MUNCY: That's all that we have, Your
4 Honor.

5 JUDGE ALBERS: Okay. Thank you.

6 Mr. Coy.

7 MR. COY: We would call Michael A. McDermott,
8 please.

9 MICHAEL A. McDERMOTT

10 called as a witness on behalf of Verizon Wireless,
11 having been first duly sworn, was examined and
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. COY:

15 Q. Mr. McDermott, would you state your name and
16 business address for the record, please.

17 THE WITNESS:

18 A. Yes. Michael McDermott, Michael spelled
19 M-I-C-H-A-E-L, middle initial A., last name
20 McDermott, M-c-D-E-R-M-O-T-T. The address is 1515
21 Woodfield Road, Suite 1400, Schaumburg, Illinois
22 60173.

1 MR. MUNCY: Your Honor, we don't have any
2 objection to waiving -- we're willing to waive the
3 foundational questions in regard to Mr. McDermott's
4 testimony and his Attachments A, B, and C.

5 MR. MADIAR: Staff concurs, Your Honor.

6 JUDGE ALBERS: Okay. Thank you.

7 BY MR. COY:

8 Q. Mr. McDermott, is what has been marked as
9 Verizon Wireless Exhibit 1 consisting of 23 pages in
10 question and answer form the testimony that you have
11 prepared and prefiled with counsel for presentation
12 in this proceeding?

13 A. Yes, sir.

14 Q. And are there three attachments to that
15 document labeled Attachment A, Attachment B, and
16 Attachment C, some of which are of multiple pages,
17 that accompany that testimony?

18 A. Yes, sir.

19 MR. COY: We would ask that that testimony be
20 admitted into evidence as well as Attachments A, B,
21 and C.

22 JUDGE ALBERS: Hearing no objection to --

1 MR. MUNCY: No objection.

2 MR. MADIAR: No objection.

3 MR. MUNCY: To what has been offered.

4 JUDGE ALBERS: Then Verizon Wireless Exhibit 1

5 and Attachments A, B, and C are admitted.

6 (Whereupon Verizon Wireless Exhibit 1

7 with Attachments A, B, and C was received

8 into evidence.)

9 MR. COY: If I could have this document marked

10 as Exhibit 1 - Attachment D.

11 (Whereupon Verizon Wireless Exhibit 1 -

12 Attachment D was marked for

13 identification.)

14 Q. Mr. McDermott, is the document I'm showing you

15 which has been marked by the reporter as Verizon

16 Wireless Exhibit 1 - Attachment D an additional

17 exhibit for your testimony in this proceeding?

18 A. Yes, sir, it is.

19 Q. Would you describe what Attachment D is?

20 A. Attachment D is a document that was a query by

21 NPA-NXX that consisted of the telephone number by

22 ILEC, and then I see in one case a wireless company,

1 for numbers ported from the ILEC to Verizon Wireless
2 that were denied because the numbers that were
3 listed were not registered in the Local Exchange
4 Routing Guide, commonly referred to as the LERG.

5 Q. What period of time does the information
6 portrayed on Attachment D relate to?

7 A. The document reflects the period of May 24,
8 2004, through the morning of June -- or evening of
9 June 7th and then a subsequent query was made on the
10 morning of June 8th which resulted in this document
11 here.

12 Q. And is this a document which is now kept in
13 the ordinary course of business by Verizon Wireless
14 to examine a document, the so-called take rate of
15 local number portability?

16 A. Yes, it is.

17 Q. Why was the time frame of May 24th through
18 June 7th the period that's reflected on here?

19 A. It was the time frame that reflected the only
20 period that we had up until the time that these
21 proceedings began that would give us an example of
22 those customers within these NPA-NXXs that belonged

1 to these ILECs and one cellular property that were
2 seeking to port, to be demonstrative of that intent
3 to port.

4 Q. Well, I was also asking you to put in the
5 record the significance of May 24th.

6 A. May 24th was the date that the FCC had set for
7 the markets not in the Top 100 MSAs to begin the
8 number portability requirement under the Federal
9 Telecommunications Act.

10 Q. So is it fair to say that that was the first
11 day that this data began to exist?

12 A. That's correct.

13 MR. COY: We would ask for the admission of
14 Exhibit 1 - Attachment D.

15 JUDGE ALBERS: Any objections?

16 MR. MUNCY: Yes, Your Honor. I'm going to
17 object to the admission of Attachment D. It's an
18 attempt by Verizon Wireless to supplement the
19 testimony that they previously filed in this
20 docket. As Your Honor is well aware, there is a
21 procedure; there's a schedule adopted for this
22 docket where the Petitioner had the right to open

1 and close, the Staff and Intervenors filing
2 testimony after the direct testimony was filed, and
3 the Petitioner having an opportunity to respond to
4 that in their rebuttal testimony. The attempt to
5 introduce this document into the record today denies
6 Petitioner the right to conduct discovery in regard
7 to it. It also would deny Petitioner the right to
8 respond to that in its rebuttal testimony, and
9 therefore we believe it should not be admitted into
10 the record for that reason, and I would also observe
11 that the document as described by Mr. McDermott
12 concerning any difficulties that they have had in
13 regard to not being able to port numbers, that
14 LaHarpe Telephone Company does not appear, at least
15 not from my -- as being listed at least from my
16 review of the three-page document that has been
17 marked as Attachment D.

18 JUDGE ALBERS: Does Staff have a response? Or
19 objection rather.

20 MR. MADIAR: Your Honor, Staff objects that the
21 admission of this Attachment D would be improper
22 hearsay and would not qualify under the business

1 record exception to the hearsay rule and that
2 Mr. McDermott is not the custodian of record, as
3 previously noted in other dockets.

4 JUDGE ALBERS: Do you have a response to the
5 objections?

6 MR. COY: First with respect to the timeliness,
7 it's perfectly obvious that the data didn't exist
8 given the schedule -- or at the time that the
9 testimony was to be filed in this case given the
10 schedule that was set.

11 Secondly, with respect to the alleged
12 prejudice, that can be curable by multiple ways
13 short of denying admission to the exhibit that are
14 far preferable and less likely to cause a reversal
15 than denial of admission would.

16 Third, it is of no import one way or
17 another whether a particular petitioner happens to
18 show up on the list. The purpose of the list is to
19 show the actual information with respect to take
20 rates as opposed to the hypothetical, hearsay, third
21 party, or fourth-hand information that others in
22 these proceedings are attempting to put in on a

1 regular basis. We believe that the information is
2 by far the most accurate and current information
3 with respect to take rates, and it would be
4 absolutely ridiculous to not allow this kind of
5 information in evidence because of the arguments
6 that have been advanced.

7 I should indicate that the standard
8 advocated by Staff isn't the proper evidentiary
9 standard to be applied in the Commission's
10 proceedings, as we've indicated earlier, under the
11 Commission's rules. They want a very strict hearsay
12 standard like in a nonjury civil trial, and that is
13 the wrong evidentiary standard before this
14 Commission.

15 JUDGE ALBERS: Well, taking all your comments
16 into consideration, I'm not inclined to believe that
17 admission of this exhibit, this Attachment D, is
18 appropriate given the circumstances. Therefore,
19 admission of Attachment D is denied.

20 (Whereupon admission of Attachment D
21 to Exhibit 1 was denied.)

22 Is Mr. McDermott tendered for cross?

1 MR. COY: Yes, he is.

2 MR. MUNCY: No cross-examination for

3 Mr. McDermott in this docket.

4 MR. MADIAR: No cross-examination from Staff,

5 Your Honor.

6 JUDGE ALBERS: Thank you, Mr. McDermott.

7 THE WITNESS: Thank you, Your Honor.

8 (Witness excused.)

9 JUDGE ALBERS: Is there anything further from
10 Verizon Wireless?

11 MR. COY: No, there is not.

12 MR. MADIAR: Your Honor, just for the record,
13 I'd just like to note that in response to what
14 Mr. Coy had said and what Staff's belief of the
15 evidentiary standard is, I just want to note for the
16 record for our purpose that the evidentiary standard
17 that we're utilizing is two-pronged. We're looking
18 at Section 10-40 of the Illinois Administrative
19 Procedure Act which says evidence not admissible
20 under -- it says the rules of evidence and privilege
21 as applied in civil cases in the circuit courts of
22 this state shall be followed. Evidence not

1 admissible under those rules of evidence may be
2 admitted, however, except where precluded by
3 statute, if it is of a type commonly relied upon by
4 reasonably prudent men in the conduct of their
5 affairs.

6 Staff made an objection within the
7 context of the civil court rules. It is Mr. Coy's
8 obligation to then pursue other avenues to admit his
9 evidence. That is the standard that Staff is
10 seeking to apply. There's nothing strange or unique
11 about it.

12 MR. COY: I think what's strange or unique is
13 the interpretation being applied to the language
14 read, but I don't think we need to belabor it too
15 hard.

16 JUDGE ALBERS: Okay.

17 Turning then to Mr. Madiar and
18 Mr. Stanton, would you like to call your first
19 witness?

20 MR. MADIAR: Yes, Your Honor. Staff would call
21 Mr. Robert Koch to the stand.

22 (Whereupon the witness was sworn by Judge

1 Albers.)

2 JUDGE ALBERS: Thank you.

3 ROBERT F. KOCH

4 called as a witness on behalf of the Staff of the
5 Illinois Commerce Commission, having been first duly
6 sworn, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MADIAR:

9 Q. Mr. Koch, would you please state your name and
10 business address for the record.

11 THE WITNESS:

12 A. Robert F. Koch, K-O-C-H, 527 East Capitol,
13 Springfield, Illinois 62701.

14 Q. Thank you, Mr. Koch.

15 MR. MUNCY: We'll waive the foundational
16 questions in connection with Mr. Koch's testimony,
17 and we don't have any objection to the admission of
18 Mr. Koch's testimony and the schedules that are
19 attached.

20 MR. RASHES: Your Honor, as long as it is not a
21 waiver of any of our previous motions, we will waive
22 the foundational questions.

1 JUDGE ALBERS: Okay. Understood.

2 MR. MADIAR: Thank you.

3 At this time, Your Honor, Staff would
4 seek to admit what has been previously marked as ICC
5 Staff Exhibit 3.0 which consists of 19 pages of
6 narrative testimony in question and answer format
7 along with four attachments which have been labeled
8 as Schedules 3.1, 3.2, 3.3 Public and 3.3
9 Proprietary, all of which comprise the Direct
10 Testimony of Robert F. Koch. We seek to admit this
11 as his sworn direct testimony in this proceeding.

12 JUDGE ALBERS: Is there any objections?
13 Hearing none, then Staff Exhibit 3.0 with the four
14 attached schedules are admitted.

15 (Whereupon Staff Exhibit 3.0 with
16 attachments was received into evidence.)

17 MR. MADIAR: Mr. Koch is available for
18 cross-examination.

19 JUDGE ALBERS: Any questions for Mr. Koch?

20 MR. RASHES: Your Honor, before we ask any
21 questions of Mr. Koch I'd like to note that about
22 four hours ago I crossed Mr. Koch in ICC Docket

1 Number 04-0181 in the matter of Flat Rock Telephone
2 Co-Op. Mr. Koch's testimony is virtually identical
3 except for number specific information and case
4 number specific information and cost specific
5 information. I did not cross him on any of those
6 specific costs but on whether or not he reviewed
7 those costs and more general matters of that sort.
8 Therefore, I would like to move to incorporate into
9 evidence in this proceeding the cross-examination of
10 Mr. Koch in that docket, Docket Number 04-0181.
11 Mr. Koch is testifying in 16 proceedings over the
12 next week and a half, and I feel it would just be,
13 once again, a complete waste of this Commission's
14 effort and time to go forward through just an
15 exercise, and it's nothing more than that, of asking
16 the exact same questions over and over again and
17 giving the witness an opportunity to refine his
18 answers from one session to another.

19 JUDGE ALBERS: Any objection?

20 MR. MADIAR: Yes, Your Honor. Staff objects.
21 Staff would object to the wholesale integration of
22 the cross-examination that Mr. Rashes might have

1 performed four hours earlier, especially in light of
2 the fact that that transcript is unavailable and
3 that this case is a separate docketed proceeding,
4 and we'd still at the same time remain open to any
5 avenues in which to come up with some form of
6 stipulated cross, whether it's partial or full, in
7 relation to the previous cross that Mr. Rashes has
8 performed in asking questions to Mr. Koch.

9 JUDGE ALBERS: And, Mr. Muncy, would your
10 objection be the same as it was with regard to
11 Mr. Hendricks?

12 MR. MUNCY: Yes, it would.

13 JUDGE ALBERS: And would your -- well, I guess
14 that was Mr. Coy that time. Sorry. Would you care
15 to add anything?

16 MR. RASHES: All I'll say is, you know, that if
17 they feel these were individual dockets and should
18 be looked at individually, the testimony should have
19 been individually prepared for each docket, not
20 basically adopting the same wholesale testimony from
21 one docket to the next, because that's what leads to
22 very similar questions and leads to refining the

1 answers from one to the next.

2 JUDGE ALBERS: I understand.

3 MR. MADIAR: Your Honor, I would object to the
4 characterization by Mr. Rashes that somehow that
5 this was some run of the mill. There are
6 similarities in these cases and there are certain
7 efficiencies of scale perhaps, but the analysis
8 performed by Staff is independent in each case, and
9 so we would object to any characterization by
10 Mr. Rashes that something impermissible might have
11 been going on.

12 MR. RASHES: Your Honor, I'm not implying that
13 anything impermissible went on, but I believe if you
14 hold the two set of testimonies side by side,
15 there's one paragraph that's substantively different
16 between them, and that speaks for itself.

17 JUDGE ALBERS: I did not take Mr. Rashes'
18 comments as suggestive of any improper behavior, and
19 I do recognize the similarities as well.

20 With that said though, again, I'm still
21 concerned about lifting transcripts from one case to
22 another and will deny the motion. Again though, I

1 will repeat; I'm open to the parties trying to
2 develop some type of compared question and answer
3 sets that they can both agree on for future cases.

4 Okay. Is there anything -- do you have
5 any questions for Mr. Koch?

6 MR. RASHES: In light of that ruling, we
7 decline to ask any questions at this time.

8 JUDGE ALBERS: Okay.

9 Mr. Muncy --

10 MR. MUNCY: No cross-examination of Mr. Koch in
11 this proceeding.

12 JUDGE ALBERS: Okay. I don't have any
13 questions either, Mr. Koch. Thank you.

14 THE WITNESS: Thank you.

15 (Witness excused.)

16 MR. MADIAR: Staff calls Jeffrey H. Hoagg to
17 the stand, Your Honor.

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1 JEFFREY H. HOAGG

2 called as a witness on behalf of the Staff of the
3 Illinois Commerce Commission, having been first duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MADIAR:

7 Q. Mr. Hoagg, would you please state your name
8 and provide your business address for the record.

9 THE WITNESS:

10 A. Jeffrey Hoagg, 527 East Capitol Avenue,
11 Springfield, Illinois 62701.

12 MR. MUNCY: Your Honor, we would waive the
13 foundational questions in regard to Mr. Hoagg's
14 testimony, and we have no objection to its admission
15 into the record.

16 MR. RASHES: Your Honor, we would waive solely
17 the foundational questions provided that it is not
18 considered as a waiver of any of your previous
19 motions or any right to make additional motions with
20 respect to his testimony.

21 JUDGE ALBERS: It's understood.

22 MR. MADIAR: Your Honor, at this time then

1 Staff would seek to admit what is marked as ICC
2 Staff Exhibit 1.0 which consists of 20 pages of
3 narrative testimony in question and answer format
4 and is previously titled the Direct Testimony of
5 Jeffrey H. Hoagg and previously filed on the
6 e-Docket system. We would seek to admit this into
7 evidence as the sworn direct testimony of Mr. Hoagg
8 in this proceeding.

9 JUDGE ALBERS: Any objection?

10 MR. RASHES: Yes, there is, Your Honor.
11 Verizon Wireless would move to strike two distinct
12 parts of Mr. Hoagg's testimony: Page 11, line 243
13 through page 12, line 248; and page 14, line 302
14 through line 307 ending after the period after the
15 word "subscribers".

16 Your Honor, in light of your previous
17 ruling striking Exhibit D from Mr. McDermott's --
18 I'm sorry; Attachment D from Mr. McDermott's Exhibit
19 1, we believe that this too is hearsay and
20 consistent with that ruling should be stricken from
21 this proceeding.

22 As established in my cross-examination of

1 Mr. Hoagg in the Flat Rock Telephone Co-Op docket,
2 ICC Docket Number 04-0181, Mr. Hoagg got this
3 information from someone at SBC and Verizon who got
4 it from someone else who may have gotten it from
5 someone else. We don't know who the middle someone
6 else was, as well as we don't know what the person
7 he asked for the information asked that someone
8 else. That's going to look great on this
9 transcript.

10 JUDGE ALBERS: You see my concern about clarity
11 of transcripts. It's all coming together now.

12 MR. RASHES: That shows you the concerted
13 hearsay here.

14 In addition, this testimony is being used
15 in this proceeding not on the common man standard
16 but really to show whether or not there would be any
17 take rates, whether or not there would be any demand
18 for this service, so it really is being used in the
19 context of the testimony in a substantive fashion.
20 Even a common man's standard, what a common man
21 would rely on standard has to recognize that we're
22 talking apples to oranges. He's looking at take

1 rates from large carriers in major metropolitan
2 areas, Top 100 MSA areas, non two percent carriers,
3 and he is also trying to then extrapolate the first
4 two months, a very limited period, of
5 wireline-to-wireless local number portability in
6 those areas that are unrelated to the rural carrier
7 areas. He's trying to extrapolate that to demand
8 months now, months from now, and years from now,
9 actually two years to thirty months from now, to
10 determine whether or not there would be demand for
11 this service. Therefore, we feel that this is
12 improper testimony and should be stricken.

13 JUDGE ALBERS: A response?

14 MR. MADIAR: Your Honor, my response is first
15 I'd like to try to summarize what I believe the
16 grounds that Mr. Rashes' objections are based upon.
17 First I understand is just hearsay; secondly, in
18 that it may not fall under the administrative law
19 hearsay exception that's provided for in Section 10-
20 40 of the Illinois Administrative Procedure Act.
21 Would that be correct?

22 MR. RASHES: I'm sorry.

1 MR. MADIAR: In that summary? I was trying to

2 --

3 MR. RASHES: Yes.

4 MR. MADIAR: Okay. Thank you.

5 In response then, based upon that
6 summary, Staff seeks to admit this as falling under
7 the administrative law hearsay exception found in
8 Section 10-40 of the Illinois Administrative
9 Procedure Act in that this is the type of evidence
10 or type of information commonly relied upon by
11 reasonably prudent men in the conduct of their
12 affairs, and that is that the individuals Mr. Hoagg
13 was speaking with are other regulatory personnel
14 from regulated companies and that this is typically
15 the type of information that -- comments that people
16 would rely upon in order to have this admitted as
17 substantive evidence.

18 In the alternative, Staff would seek to
19 have this admitted for the limited purpose of
20 allowing Mr. Hoagg as offering opinion testimony in
21 this proceeding as explaining the opinion that he's
22 offering in this proceeding and not for substantive

1 evidence purposes.

2 JUDGE ALBERS: Mr. Rashes, you referenced
3 cross-examination of Mr. Hoagg in a prior docket.
4 Would you care to try to present that evidence in
5 this proceeding so that the record in this
6 proceeding contains that information?

7 MR. RASHES: We certainly could ask him the
8 same questions, Your Honor.

9 CROSS EXAMINATION

10 BY MR. RASHES:

11 Q. Mr. Hoagg, with whom at SBC did you talk to to
12 get this information?

13 A. Carl Wardin, W-A-R-D-I-N, of their -- what I
14 term their regulatory group.

15 Q. Did Mr. Wardin? Am I pronouncing that
16 correctly?

17 A. Correct.

18 Q. Did Mr. Wardin have the information readily
19 available or did he have to ask someone else?

20 A. He had to ask someone else within the company
21 for the information.

22 Q. Do you know exactly what he asked that other

1 person within the company for?

2 A. No.

3 Q. Do you know if that other person had to ask
4 someone else?

5 A. No.

6 Q. And what was the date that you had that
7 conversation with Mr. Wardin?

8 A. I still can't give you a precise date. It
9 would have been in the late December/early January
10 time frame I believe.

11 Q. And with whom did you talk to at Verizon
12 Landline?

13 A. A Mr. Greg Smith.

14 Q. Did Mr. Smith have the information readily
15 available or did he have to ask someone else?

16 A. He had to seek the information from someone
17 else within the company.

18 Q. Do you know if the person that Mr. Smith asked
19 had the information readily available or did he have
20 to ask someone else or she?

21 A. I do not know.

22 Q. And what was the date of your conversation

1 with Mr. Smith?

2 A. Same general time frame, December of last year
3 or January of this year.

4 MR. RASHES: Your Honor, with that, I'll just
5 add that on line 239 through 241 of his testimony he
6 says there is some Illinois specific information
7 upon which to draw conclusions concerning the take
8 rate. He clearly is, despite what Mr. Madiar
9 states, it speaks for itself, that he is using this
10 as substantive evidence.

11 JUDGE ALBERS: I think you have sufficiently
12 drawn into question the substantive value of the
13 information you're objecting to. With that in mind,
14 I will still allow -- I'll deny the motion to strike
15 but with the limitation that the data upon which
16 you're concerned about or the alleged data, if you
17 prefer that phrase, should not be used as
18 substantive facts upon which to rely and will merely
19 be considered information that Mr. Hoagg received
20 and used to develop his opinions, but, again, I'll
21 grant you, Mr. Rashes, you have cast some doubt on
22 the value of that as well.

1 And is there anything further then with
2 regard to this motion to strike?

3 MR. RASHES: (Shakes head back and forth.)

4 JUDGE ALBERS: Any additional motions to
5 strike?

6 MR. RASHES: No.

7 MR. MADIAR: Thank you, Your Honor. Staff
8 would -- well, I don't -- where are we at? He's
9 available for cross-examination.

10 JUDGE ALBERS: Yeah, I think --

11 MR. MADIAR: He's available for
12 cross-examination.

13 JUDGE ALBERS: Yeah.

14 MR. RASHES: Your Honor, we would, once again,
15 move to incorporate by reference or as an exhibit in
16 this proceeding when it becomes available the
17 cross-examination of Mr. Hoagg from Docket Number
18 04-0239, the Odin Telephone Exchange case. I, too,
19 have lost track of how many times Mr. Hoagg has been
20 on the stand there. It certainly seems like he's
21 almost constantly on the stand there, and as
22 Mr. Hoagg admitted in the previous docket which was

1 Docket Number -- Flat Rock, 04-0181, the only
2 difference between each of his sets of testimony in
3 this proceeding is changing the docket number,
4 changing the name of the company, and changing the
5 various rates of -- the cost rates that he
6 supposedly looked at. His testimony is the same
7 from each docket to the next, and it is prejudicing
8 Verizon Wireless to allow him to continually refine
9 and change his answers to questions when those
10 questions are the same. We understand we have asked
11 some different questions, and this would also give
12 Staff and the Petitioner the advantage that if we
13 were to incorporate the Odin cross, our questions
14 would be the same from docket to docket to docket.

15 JUDGE ALBERS: Before hearing any responses to
16 that motion, I don't believe I made any ruling on
17 the admission of Staff Exhibit 1, so were there any
18 further objections? Okay. No further objections,
19 and taking into account the concerns Mr. Rashes has
20 regarding Mr. Hoagg's testimony as well as Mr. Coy's
21 earlier motion to dismiss, Staff Exhibit 1.0 is
22 nevertheless admitted.

1 (Whereupon Staff Exhibit 1 was received
2 into evidence.)

3 JUDGE ALBERS: Okay. And as far as responses
4 to the pending motion.

5 MR. MADIAR: Your Honor, Staff objects to the
6 wholesale integration of Mr. Rashes'
7 cross-examination of Mr. Hoagg from Docket Number
8 04-0239 given that each case is a separate case and
9 that testimony offered is testimony for each case.
10 Staff at the same time remains open to the admission
11 of perhaps stipulated cross-examination and answers
12 as outlined by the Administrative Law Judge. We
13 remain open to having that as an opportunity to
14 expedite matters in this proceeding and other
15 proceedings.

16 JUDGE ALBERS: Mr. Muncy?

17 MR. MUNCY: I object to the use of the --
18 incorporation of the Odin cross-examination into
19 this in that this docket is a different docket,
20 different factual circumstances, and, as we've
21 discussed in several dockets, nobody has had an
22 opportunity to review that Odin transcript at this

1 point and I'm just uncomfortable doing that and
2 would ask that if Verizon Wireless has questions of
3 Mr. Hoagg as they pertain to this docket that they
4 proceed to ask them.

5 JUDGE ALBERS: And I guess I should have asked
6 this of you gentlemen as well. Would your reply to
7 the responses be essentially the same as with regard
8 to Mr. Koch and Mr. Hendricks?

9 MR. RASHES: Yes, they would, Your Honor.

10 JUDGE ALBERS: Then in that case my ruling
11 would be the same as well.

12 Do you have any questions for Mr. Hoagg?

13 MR. RASHES: In light of your ruling, Your
14 Honor, we do not have any questions at this time.

15 MR. MUNCY: No questions of Mr. Hoagg in this
16 docket.

17 JUDGE ALBERS: Okay. Thank you.

18 EXAMINATION

19 BY JUDGE ALBERS:

20 Q. Mr. Hoagg, are you at all concerned about the
21 potential for a patchwork of suspensions among the
22 various carriers?

1 A. Yes, that is a concern, and I do think that's
2 something that the Commission should consider and
3 weigh when it considers this docket.

4 Q. And what type of concerns or problems do you
5 think could arise from that situation?

6 A. I believe that a patchwork type situation
7 would contribute to customer confusion and the
8 attendant costs and inconveniences associated with
9 that and inability for customers to understand the
10 nature of that patchwork.

11 I also believe that it would cause
12 difficulties for the carriers involved and likely --
13 seems likely to me that it would cause certainly a
14 number of the carriers involved at least to incur
15 some additional costs.

16 Q. And possibly hamper competitive efforts of
17 those wireless carriers?

18 A. Yes. You know, to some unknown degree, to
19 some degree I believe it would hamper -- I believe
20 that's a correct statement.

21 Q. Do you think there are any customers in this
22 particular company's service area that would

1 potentially be interested in porting their numbers?

2 A. You know, I have no firsthand knowledge, but I
3 expect that there are some customers.

4 Q. It's possible.

5 A. I would be surprised if there aren't some
6 customers in the serving territory that would like
7 to port their numbers from a wireline to a wireless
8 carrier.

9 Q. Right. Okay. And to the extent that LNP
10 implementation could affect number pooling, do you
11 think the Commission ought to give some
12 consideration to that in making its determination?

13 A. Yes, I do.

14 JUDGE ALBERS: Okay. Thank you, Mr. Hoagg.

15 Do you have any redirect?

16 MR. MADIAR: No redirect, Your Honor.

17 JUDGE ALBERS: Okay.

18 MR. MADIAR: Staff rests.

19 JUDGE ALBERS: Thank you.

20 (Witness excused.)

21 Is there anything further with regard to
22 LaHarpe Telephone Company?

1 MR. MUNCY: I don't believe so, Your Honor. I
2 believe it can be marked Heard and Taken.

3 JUDGE ALBERS: All right. Hearing nothing
4 further then, the record in this matter is mark
5 Heard and Taken.

6 HEARD AND TAKEN

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